

# AFGE

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**STATEMENT BY**

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**BEFORE**

**THE SUBCOMMITTEE ON  
MANAGEMENT, INTEGRATION, AND OVERSIGHT  
HOUSE HOMELAND SECURITY COMMITTEE**

**REGARDING**

**HUMAN CAPITAL ISSUES IN THE DEPARTMENT OF  
HOMELAND SECURITY**

**ON**

**MAY 18, 2006**

Mr. Chairman and Subcommittee Members: My name is John Gage, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal employees represented by AFGE, including 60,000 who work in the Department of Homeland Security (DHS), I thank you for the opportunity to testify here today on the current serious problems at DHS.

As you know, the Office of Personnel Management (OPM) conducted its Human Capital Survey of Federal Agencies from August to December 2004 and released the results in May 2005. An analysis of the results of that survey by the Center for American Progress found that DHS came in dead last of the 30 agencies for employee satisfaction, adequate resources, leadership, working conditions and many other factors. DHS employees have the lowest morale of any group of Federal employees.

This does not come as a surprise to AFGE. In 2004, we had the Peter D. Hart Research Associates conduct a survey of CBP employees for us. That survey found that:

1. Most frontline CBP personnel do not believe they have been given the tools to fight terrorism.
2. Most believe that DHS could be doing more to protect the country.
3. Most have serious concerns about DHS strategies related to their jobs; the majority felt that the "One Face at the Border" initiative has had a negative impact.
4. Most believe that the changes in personnel regulations will make it harder to accomplish their mission.
5. Three in five respondents say that morale is low among their co-workers.

We shared these findings with DHS, but our survey was dismissed as just a union survey – not important. Instead of being alarmed by the results and working with us to address the concerns, DHS instead ignored us and its own frontline employees. The OPM Human Capital Survey reinforced and validated what we already knew from our own poll of the people we represent and from our ongoing communication with them. In addition to the concerns above, CBP employees feel strongly that there are significant inequities within the Department, including the disparity in DHS' recognition of Law Enforcement Officer status.

## **INTRODUCTION**

Since its inception, DHS has not been straightforward or honest in its dealings with its employees, the public, or the Congress. Looking back, we cannot point to a single thing DHS has done right regarding its frontline employees.

Since September 11, 2001, the Bush Administration has taken every opportunity available to advocate for a profound erosion of civil service protections and collective bargaining rights for federal employees. In 2002, the Bush Administration reluctantly agreed with Senator Joseph Lieberman (D-CT) that the creation of a Department of Homeland Security (DHS) was necessary. However, the Bush Administration insisted on a *quid pro quo* for that acquiescence; specifically, that federal employees who were transferred into the new department would not be guaranteed the collective bargaining rights they had enjoyed since President Kennedy was in

office. In addition, the Bush Administration insisted that the legislation that was eventually signed into law exempt the DHS from compliance with major chapters of Title 5 of the U.S. Code, including pay, classification, performance management, disciplinary actions and appeal rights, as well as collective bargaining rights.

## **DEPARTMENT OF HOMELAND SECURITY**

On November 25, 2002, President Bush signed the bill creating the Department of Homeland Security (DHS). This law has combined 22 federal agencies and 170,000 employees, 60,000 of whom are represented by AFGE. Most of these employees had been working for the Immigration and Naturalization Service (INS) as Border Patrol Agents, Immigration Inspectors, Special Agents, and Detention and Deportation Officers. AFGE-represented employees from the Coast Guard, the Federal Emergency Management Agency, the Animal and Plant Health Inspection Service (formerly under the Department of Agriculture), the Federal Protective Service, the Chemical, Biological, Radiological and Nuclear Response Assets division of the Department of Health and Human Services, and the Plum Island Animal Disease Center were also brought into DHS.

### **The Right to Organize**

One of the most contentious issues in the Congressional debate on the creation of the DHS related to the authority of the President to deny collective bargaining rights to employees, subdivisions and agencies engaged in national security work. President Bush used this authority early in 2002 to prevent employees of the U.S. Attorneys' offices from organizing. Both because of this action, and fears that the President would abuse this power by excluding all unions from the DHS, AFGE spearheaded an effort in Congress to limit this authority. After a protracted debate, the Congress agreed with the Administration's position on this matter. Since enactment, President Bush has exercised the power to exclude unions from all or part of the Department through his December 2005 Executive Order eliminating collective bargaining rights for all employees of the Office of Investigation in Immigration and Customs Enforcement (ICE).

### **Personnel Flexibility Provisions**

An equally contentious issue during the debate on homeland security in 2002 concerned the supposed need for additional personnel flexibilities in connection with managing employees of the DHS. Section 841 of the Act authorizes the establishment of a new Human Resource Management System and provides the Administration with the ability to modify Chapter 5 of the United States Code in each of the following areas: pay, classification, performance, disciplinary actions, appeals, and labor-management relations. The rationale was to put all 170,000 of the agency's employees under one set of rules and policies. Conveniently ignored was that 60,000 of the 170,000 (more than a third) of those employees, the TSA screeners, would be outside the supposedly department-wide system.

The new law created a process for employee collaboration in the development of the new system, but left the Secretary of DHS with the final authority to impose changes over objections from

unions or other employee representatives. In 2003, AFGE and representatives from OPM and DHS spent six months exploring options and debating proposals to address pay, classification, performance, disciplinary actions, appeals and labor-management relations. This was followed by a statutory “meet and confer” process over the regulations DHS proposed. DHS published its final regulations, called “MAX<sup>HR</sup>,” on February 1, 2005. AFGE and others sued to block implementation, and in August 2005, Federal Judge Rosemary Collyer ruled that major portions of the DHS regulations, including those involving collective bargaining, were an illegal violation of the terms set forth in the Homeland Security Act. DHS has appealed the judge’s rulings, and thus the fate of the DHS personnel system remains unknown.

## **Pay System**

The DHS personnel regulations provide very little detail about the new pay system for DHS employees, and leave broad discretion in every area. DHS has not yet issued any directives about pay. This raises the real possibility that the salaries of some employees will unfairly lag behind those of other employees in the Federal Government, making it extremely difficult to attract and retain high-quality employees.

Everything we have seen to date indicates that this is a ploy to reduce pay for most DHS employees, resulting in lower standards of living and lower morale. Once this system is implemented and experienced employees start heading for the exit doors, it will be impossible to replace their expertise. The employees of the DHS will quietly, one by one, leave to pursue careers in other agencies that will treat them with the dignity and fairness that they deserve. The real losers in this ill-advised experiment will be the American citizens who are looking to their government for protection. We call on this Committee to revoke DHS’ authority for MAX<sup>HR</sup> and use the funds for better purposes – to increase staff and strengthen frontline border protection.

## **Collective Bargaining**

Under the DHS personnel regulations, the scope of bargaining is so limited that unions will no longer be permitted to bargain over any issues that are even remotely related to operational matters, even though they often profoundly affect these employees who possess a great deal of knowledge about them. In addition, the final DHS personnel regulations reduce DHS’ obligation to collectively bargain over the already narrowed scope of negotiable matters by making department-wide regulations non-negotiable. Collective bargaining is currently precluded only over government-wide regulations and agency regulations for which a “compelling need” exists. The final DHS personnel regulations would allow management to void existing collective bargaining agreements, and render matters non-negotiable, simply by issuing any department-wide regulation. The result is that employees will be deprived of their voice in most workplace decisions.

In addition, the DHS personnel regulations transfer responsibility for adjudicating collective bargaining disputes from the Federal Labor Relations Authority (FLRA) and the Federal Service Impasses Panel (FSIP) to an internal DHS Labor Relations Board, whose members are hand-picked by the DHS Secretary with no Senate confirmation. These members are removable only

by the Secretary. Meaningful collective bargaining must have independent review and resolution of disputes.

Judge Rosemary Collyer ruled against DHS and found that the final regulations impermissibly limit bargaining and do not provide for an independent third party for dispute resolution, and, therefore, do not ensure collective bargaining as required by the Homeland Security Act.

### **Employee Appeal Rights**

The Homeland Security Act gave the Secretary and OPM Director authority to modify the appeals procedures of Title 5, but only in order “to further the fair, efficient and expeditious resolution of matters involving the employees of the Department.” Instead, the final regulations virtually eliminate due process by limiting the current authority of the Merit System Protections Board (MSPB), arbitrators and adjudicating officials to modify agency-imposed penalties in DHS cases to situations where the penalty is “wholly without justification,” a new standard for DHS employees that will rarely, if ever, be met.

### **DHS Went Beyond Congressional Authorization**

As mentioned earlier, District Court Judge Collyer agreed that DHS has gone beyond the latitude that the law allowed in both labor relations and appeals. That decision is currently being appealed by DHS.

DHS has claimed that it created a new personnel system that ensured collective bargaining, as required by Congress. But the Court has ruled that it has not ensured collective bargaining, but eviscerated it. DHS has claimed that its regulations are fair, as required by Congress. But the Court has ruled that they are not fair, because they would improperly prevent the MSPB from mitigating a penalty it considered to be too harsh or out of proportion to the offense.

AFGE has no confidence that DHS will be less deceptive or do a better job with the other parts of MAX<sup>HR</sup> and create and implement fair, credible and workable pay, performance management and classification systems. DHS employees also have no confidence and a great deal of anxiety and distrust about these new systems.

### **COLLABORATION WITH UNIONS**

This distrust did not happen overnight. Let me give you a little background on our involvement in the whole process of developing MAX<sup>HR</sup>. As you will see, the process was a charade in which employees’ views, and the views of their representatives, were collected, and then ignored.

Under the Homeland Security Act, the Secretary of Homeland Security and the Director of OPM were authorized to issue regulations jointly that would establish and describe the new personnel system.

The development of the personnel system involved both a formal statutory collaborative process between unions representing the agencies' rank-and-file employees and agency operational managers and an earlier design process created by the Secretary and the Director.

### **The Statutory Collaboration Process**

The Homeland Security Act required that the new personnel system be created with full participation by elected representatives of the employees.

Under section 9701(e)(1)(A), the Director and Secretary were required to provide their proposal to the employee representatives. The unions would then have 30 days to review the proposal and make recommendations to improve it. After receiving these recommendations, the Director and Secretary were required to give them "full and fair consideration in deciding whether or how to proceed with the proposal."

After deciding how much of the employee representatives' recommendations to adopt and how much to reject, the Secretary and Director were required to tell Congress what recommendations were rejected. The Secretary and Director then were to meet and confer for at least 30 days with the unions, in order to attempt to reach agreement on the points in dispute. The Federal Mediation and Conciliation Service was to assist.

Ultimately, the Secretary and Director adopted regulations over the employees' objections.

### **The Pre-statutory Design Process**

Rather than launch right into the statutory process, the Secretary and Director established a preliminary design process, which included substantial union involvement from April through approximately October 2003.

During this time, AFGE participated in developing options for the new personnel system along with management representatives from DHS, OPM, and other unions. The group, called the Design Team, divided into two sub groups – one focused on Pay, Performance and Classification while the other focused on Labor Relations, Adverse Actions and Appeals. Over the six months that the group operated, it heard from experts in personnel system design from academic institutions, federal agencies, non-profits, and private firms. The members of the group read from the extensive body of literature on human resource systems and contacted organizations in the private sector, the non-profit sector, federal agencies, and state and local governments to learn more about their personnel systems.

In addition to the Design Team, a Field Review Team was established, comprised of union representatives and managers from DHS facilities around the country. The Field Review Team and the Design Team shared ideas and criticisms of the developing materials at these times.

### **Site Visits, Focus Groups, and Town Hall Meetings**

During the summer of 2003, members of the Design Team and top DHS, OPM and union officials traveled to eight cities around the country to hold Town Hall meetings for DHS employees in the area and to conduct focus groups with both management and non-management employees. These visits took place in Norfolk, New York, Detroit, Seattle, Los Angeles, El Paso, Miami, and Atlanta. During the Town Hall meetings, employees were free to ask questions, make comments or express their concerns. And they did, in city after city, speak up and say what was on their minds.

In the focus groups, DHS workers were asked to discuss pay, classification, performance management, labor relations, adverse actions, and appeals – specifically to talk about what works, what doesn't and what might be an improvement. Employees shared their ideas, told us about rumors circulating in their workplaces, and voiced their deep concerns about radically changing a system the vast majority felt needed only small changes to work better.

In fact, the Design Team heard over and over again, both in the Town Hall meetings and in the focus groups, that if the current system were properly funded and carried out, it would work well. DHS employees said it was important for working people to be able to have some confidence in the stability of their income so they could plan for their families' futures. They said that their performance appraisal systems did a poor job of accurately and fairly making distinctions among employees about their performance. They said that favoritism and poor management were big problems where they worked and that giving supervisors and managers more control over their pay was a bad idea. They said they feared what pay-for-performance would do to cooperation, teamwork, and the sense of pulling together for a common mission. They said they wanted to be protected from erroneous or vengeful management actions against them.

While the members of the Design Team were in these eight cities, they also visited several DHS workplaces in the area. This gave the Team insights into the variety of jobs DHS employees perform and an increased appreciation of the vital work done by the Department. At several of the sites, Team members had an opportunity to talk with employees. Once again, the overriding themes were concerns about putting pay decisions, based on subjective performance evaluations, into the hands of managers, pitting employee against employee to win the prize of a higher payout, losing protections against wrongful management actions, and losing the right to have a meaningful say about conditions in their workplaces.

### **Personnel System Options**

Once the Design Team members were back home, work on developing the options started in earnest. The Team brainstormed ideas for options, grouped similar ideas together, and set up committees to begin the work. Out of this process came the fifty-two options that went forward to the Senior Review Committee and then to the Secretary of DHS and the Director of OPM. Regrettably, there was no rigorous attempt to derive the options from the actual research that was done nor to show evidence that such options were likely to be successful or solve real problems in the Federal workplace.

The Senior Review Committee (SRC) included me in my capacity as AFGE National President, as well as the presidents of the National Treasury Employees Union (NTEU) and the National Association of Agricultural Employees (NAAE), top officials from DHS and OPM and technical advisors from universities and the private sector. The SRC met first in July to approve the guiding principles and the process developed by the Design Team. In October, we held a two-and-a-half-day facilitated meeting to discuss the options and various ideas and concerns we all had about personnel reform. While the discussions were lively and informative, there was no attempt to winnow down the number of options to those most palatable to the SRC as a whole; rather, all fifty-two went forward to the Secretary and the Director. In other words, this high level committee was not asked to do the real work of collaboration and try to come up with ideas we could all live with. Instead, it was all for show.

AFGE insisted on being able to participate in this endeavor, as we were assured that the work of the Design Team and the Senior Review Committee would be heeded when DHS and OPM made decisions regarding the new DHS personnel system. In fact, both DHS and OPM involved AFGE well before the statutory collaboration process began. Substantial resources were devoted to establishing and supporting the Design Team, the Field Review Team, and the Senior Review Committee, as well as carrying out the ambitious schedule of Town Hall meetings and focus groups around the country. During the Design Team process there was a genuine sense of collaboration.

That is why we are so angry with the outcome of the process. This anger goes beyond our fundamental disagreement with many of the decisions that made their way into the regulations. We also are outraged that the regulations do not reflect the research that was done by the Design Team, the views and preferences of the overwhelming majority of Town Hall and focus group participants, the bulk of academic research in the field, the more than 3500 comments (a record at the time) sent in by employees and members of the public, or the ideas and objections raised by the Unions during the Meet and Confer process. Ultimately, none of this mattered to DHS and OPM when they developed their regulations.

### **Employees' Views**

As mentioned above, the Design Team heard over and over again, both in the Town Hall meetings and in the focus groups, that if the current system were properly funded and carried out, it could achieve everything the advocates of change professed to want. Both managers and non-managers made it clear that they did not believe that there were terrible problems that could only be solved by radical change. If anything, DHS employees said they feared that problems and disruptions would result from, not be resolved by, such change. Employees said it would harm morale and recruitment for workers to have no stability in their income. By far the vast majority of workers did not believe their appraisal systems or their managers could do a fair and accurate job of paying good employees different amounts based on their performance. They feared that such a system would create a cutthroat environment among employees and harm the Department's ability to carry out its mission. *There was absolutely no call from the employees the Design Team researched to make the changes found in the regulations.*



## **Review of Other Employers**

Even if one looks hard, one would find little, if anything, in the research done by the Design Team that supports the proposed or final regulations. It is telling that in the introductory explanations to the proposed regulations, the authors do not even pretend that any proposals were drawn from the research or cite any research to support them. Instead they allude to undocumented and unproven allegations about the inability of federal managers to do their jobs under the current system. Indeed, the regulations reinforce the fears employees expressed to us during the site visits and in other communications, namely that the outcome was, for the most part, predetermined and based on the ideological wish lists of certain segments of management and the Administration rather than on any study of the facts.

What does the research documented by the Design Team actually show? It shows that in all the organizations researched by the Team, only New York State has any system in place to evaluate the success of its labor relations program. It shows that the Australian Customs Service has a pay-banding system in which pay, performance and classification plans are negotiated with the employees' unions and become part of the contract. It shows that in Great Britain's Her Majesty's Customs and Excise, there is a pay banding system with 11 bands and pay increases are negotiated with the two unions that represent the employees.

The Design Team research shows that the Kings County Washington Sheriff's Department Personnel Manager does not recommend pay-for-performance for public sector employees. He says it creates three or four months of chaos and resentment and there is no return on investment. It is hard to measure things objectively and counting things like arrests can backfire. It is often the luck of the draw - one employee can have many cases that each take only a short time while another gets a case that takes years to resolve. How do you equalize employees' opportunities to do the things that get them pay increases?

In North Carolina, the Design Team learned that the State Department of Transportation implemented a competence-based system. Unfortunately, the state legislature failed to provide a general increase for state workers so everyone in the Department was given a one-time bonus of \$550 and 10 bonus leave days. The research showed that in New York State, pay is negotiated with the employees' unions and there is no pay-for-performance system. In Philadelphia, four different unions negotiate the systems for white collar, blue collar, police, and fire fighters. Classification and pay changes are subject to review by a joint labor-management committee. In the state of Pennsylvania, bargaining unit pay is negotiated and, while employees are not required to join the union, they must pay a fair share if they do not join. There are no pay-for-performance systems.

In Hampton, VA, there is a pay-for-performance system, but it doesn't include police, fire or rescue employees, jobs similar to the core jobs in DHS. They get increases based on training and certification in required skills. In Pierce County in Washington State, half of an employee's pay increase is based on seniority and half on performance. Here too, however, police and firefighters get competency adjustments instead. Riverside County, California has a competency-based pay system for 500 Information Technology employees, which must be negotiated prior to implementation in bargaining units. Employees with more than five years on

the job are eligible for a “Historical Knowledge” competency, similar to a longevity increase, in order to recognize the importance of experience and loyalty.

St. Paul, Minnesota has 26 bargaining units that negotiate pay, performance appraisal systems, and other conditions of employment. Most employees are under a step system similar to the current General Schedule system. Attorneys, however, are under a collectively bargained performance progression system. The Washington State Legislature recently passed a law that expands the scope of bargaining to include economic issues. At the same time, the legislation called for changing the civil service system. They have rejected the idea of a pure pay-for-performance system as too onerous and contrary to their culture. They plan instead to have a mix of performance awards, incentives, skill-based systems, gainsharing, etc. They said that pay-for-performance should be the last thing implemented, if at all. First you have to have sound classification, pay and performance management systems in place.

According to the Design Team research, the Federal Aviation Administration has a Core Compensation Plan, which is negotiated in bargaining units, including pay. Since the completion of the Design Team process an additional bargaining unit reached agreement on the Plan, but it calls for any Organizational Success Increase determined by the Administrator to be divided equally among the employees rather than more being given to some based on their appraisals. Employees may grieve virtually all pay-setting actions through the MSPB, negotiated grievance procedures for bargaining unit employees, or through what FAA calls its “Guaranteed Fair Treatment Process,” in which the employee and management jointly select a neutral third party. We have since learned that 2000 FAA employees filed a lawsuit because they had not received a pay increase for three years.

The Bureau of Alcohol, Tobacco, Firearms and Explosives has a pay-banding, pay-for-performance demonstration project that involves only its scientific, technical and engineering positions. The FBI has a pass/fail system and no pay banding.

The Federal Deposit Insurance Corporation (FDIC) has a pay system that is collectively bargained. They used to have a pay-for-performance system tied to appraisals but abandoned it and replaced it with a pass/fail system. They found that the amount of pay differences based on differences in performance was too small to justify the administrative costs of running the program. They are replacing it with a program in which at least one-third of the employees will be recognized as top contributors and receive additional 3% increases. The Board of Governors of the Federal Reserve System has a pay-for-performance system that covers mostly professional employees. The Government Accountability Office has a pay banding system in which employees are evaluated on their performance in core competencies. They have since moved to a market-based system. There have been recent reports in the press of dissatisfaction among GAO employees, with some leaving the Office. The Internal Revenue Service has a pay-banding system for managers.

Several small independent agencies have pay-for-performance systems, such as the National Credit Union Administration, the National Security Agency, and the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission. Some of the employees of these agencies are represented by unions while others are not. The Design

Team research has no information about whether or not any of these systems are successful. The Transportation Security Administration has a core compensation system for non-screeners based on the FAA system. Because of problems with the performance appraisal system, employees received increases equivalent to the GS increase in January 2003 rather than increases based on performance.

The Boys and Girls Clubs of America aims for a bell curve distribution of their performance ratings and bases its employees' pay on them. Boeing has broad bands, with merit pay increases based on performance. In bargaining units, the unions negotiate how much of the increase is guaranteed and how much is subject to performance pay. General Electric has a pay-for-performance banding system for managers – the bulk of the workforce is not included. IBM has a market-driven pay system that allows the top 20% of performers to get increases as much as three times the amount given to the bottom 20%. IBM told the Design Team that it is easy to differentiate the top and bottom performers but it is very difficult to make distinctions among their good employees in the middle. In the Union Pacific Railroad, about 70% of employees get performance cash awards. At PepsiCo, executives and non-union employees are in a pay-for-performance system. The research for Verizon only deals with managers who are in a pay-for-performance system.

**None of the research backs up the final DHS regulations or shows that pay-for-performance works in the sense of improving employee performance, lowering costs, and improving recruitment or retention.** Not surprisingly, there was no attempt to try to demonstrate any of the alleged virtues of pay for performance. In fact, in response to AFGE requests for *any* evidence that pay-for-performance improves the quality or productivity of an organization, we were told that this was not the goal. OPM claimed that performance pay was a “fairness” issue. Apparently, according to both OPM and DHS senior leaders on the Design Team, employees resent working hard and having a co-worker, who they believe is not working quite as hard get the same amount of pay.

Maybe this is a problem in headquarters offices. We don't hear this concern from our members who work at the ports and borders, and other federal facilities. Most employees don't waste time stewing about their co-workers. People at the frontlines know who can't do the job (very few) and who can. Beyond that, they know who is better at certain things, who is the go-to person for certain questions, etc. They know that some days you do something heroic and weeks can go by just doing routine things. Add pay for performance to most frontline jobs, and you **WILL** make that belief that workers resent each other come true.

Why implement an entire pay system whose sole justification is to accommodate employees who pout about what a co-worker is paid? What about teamwork and agency mission? Even OPM admits that adopting agency-wide pay for performance is not a solution to managers' disinclination to address the much-hyped problem of poor performers. However, they are basing their recommendations on good employees' supposed belief that they are better than other employees and grouching about not getting a little more money.

AFGE does not believe that poor performers should continue in jobs they cannot or will not do right. Our members do not want to work with poor performers. We believe that managers

should bring sub-par performance to an employee's attention, try to find out what is causing it, provide training or other resources, and give the employee time and encouragement to improve. Ultimately, however, if the employee is unwilling or unable to improve, action should be taken to demote, reassign or terminate that employee. We don't see anything in MAX<sup>HR</sup> that gives us confidence that this will happen any better than it does currently. Of course, there should be fair and independent appeals processes for the employee to challenge the decision. But it is wrong to make the kind of radical and disruptive change DHS is planning because it believes that some good employees worry about what other good employees are making. This is an absurd and puerile basis for imposing a potentially destructive pay system on an entire agency.

## **Meet and Confer**

As required by Congress, DHS and OPM met with the three unions in order to attempt to reach agreement on the points in dispute with the proposed regulations. Rather than enumerate those things that DHS agreed with the unions about and those that were in dispute, DHS chose to withhold that information, thus making the Meet and Confer process less efficient – we weren't able to focus on the most important disagreements. In addition, we weren't able to use the time to deal with the details of the new pay, performance management and classification systems, because DHS had put only vague ideas in the proposed regulations. Ultimately, the final regulations did not reflect the ideas, concerns or suggestions of the unions in any meaningful way. Once again, the process was a sham.

## **ANALYSIS OF THE PAY, PERFORMANCE MANAGEMENT AND CLASSIFICATION SYSTEMS**

Any new pay and classification system should support, not undermine, the mission of DHS. This is only possible with a system that promotes teamwork, rather than penalizes it. Unfortunately, the DHS system fails this basic test.

DHS plans to establish occupational clusters composed of four bands – (1) entry and developmental, (2) full performance, (3) senior expert, and (4) supervisory. With proper design and safeguards we see potential benefits in the establishment of an entry and developmental band. Although it is not clearly specified how such a band would function, we believe that it could be modeled after the current career ladder system, which also is an entry and developmental system leading to a full performance level. With negotiated safeguards, which ensure fairness in moving within and between bands, availability of appropriate training and assignments to demonstrate competence, we could support flexibilities that allow faster movement for those who demonstrate readiness for the next level sooner than a year. If bargained collectively, this is the type of reform AFGE would support as a means of enhancing the operation of DHS.

The current classification system provides a good framework for insuring the important principle of equal pay for substantially equal work. There is absolutely no indication of how these new clusters and bands will meet this important goal. To date, we have not seen even a draft management directive regarding clusters or bands. We do know that the regulations propose that an employee's assignment to a particular cluster or band *will not* be subject to an as yet

unspecified DHS reconsideration process. The regulations also state these matters will be barred from collective bargaining. Whether this system will be fair and equitable is anyone's guess – based on what we have seen so far from DHS, we have grave doubts.

We have many concerns about the system of pay adjustments, but foremost is whether or not the adjustments will be funded. Will the Administration and the Congress fund the increases next year? If they do, will they fund them in the succeeding years? As we all know, today's Congress cannot bind the next one. This is especially troublesome in the DHS proposal for annual performance based pay increases, which, if not properly funded, will only produce a ruinous zero sum game with the perverse incentive to promote a coworker's failure.

The payout system described in the regulations would establish a point system for each employee depending upon his or her appraisal. The system is set up in such a way that one employee does better if more of his or her co-workers do poorly. The value of a payout point is determined after employees have been evaluated. If the aggregate amount of "performance" is high, the value of a point is low. If the aggregate amount of "performance" is low, the value of a point is high. The incentive is both perverse and clear: The lower the performance of the organization as a whole, the bigger the raise an employee judged to be a high performer will receive. Someone motivated to work hard for the promise of a big raise will only achieve his goal if management judges the majority of his coworkers to be losers.

The example given in the proposed regulations describes a group of 100 employees for whom the performance pay pool is determined to be \$84,390. In this hypothetical group, 30 employees receive a "meets expectations" rating valued at 1 point, 46 employees receive an "exceeds expectations" rating valued at 2 points, and 24 employees receive a "meets excellence" rating valued at 3 points. The total number of points for the group is 194, which is divided into the performance pay pool to come up with \$435 as the value of a point. Thus a "meets expectations" employee would get \$435, an "exceeds expectations" employee would get \$870, and a "meets excellence" employee would get a \$1,305 pay increase. But what if there were more "meets expectations" employees or employees who fail to meet expectations and fewer "meets excellence" employees or those who "exceed expectations"? We call this system "compensation cannibalism." It is a dysfunctional environment that encourages backstabbing rather than teamwork, and fairness is nowhere to be found.

We are still waiting for more of the actual details. To date, DHS has only issued a draft Management Directive (MD) on Labor Relations, which was put on hold due to the Court decision, and a final Management Directive on Performance Management, which will not affect bargaining unit employees. We submitted extensive comments on the draft MD and made numerous suggestions that were largely ignored. We can only speculate that the MD that will affect our bargaining units will be similar to the first MD. At this point, we have little confidence that our ideas and concerns about the system as it will apply to bargaining unit members will receive any more serious consideration from DHS than we have seen since we first became involved.

Human Resource literature is full of articles about how difficult and counter-productive pay-for-performance is. Bob Behn of Harvard University's John F. Kennedy School of Government

wrote about the pitfalls of pay-for-performance, particularly for government agencies, which cannot promise that their systems will be consistently and adequately funded over time. Behn argues that one risks demoralizing the majority of good workers by singling out a few for rewards – and then finds that, usually, employers cannot pay those employees enough to make it worth the problems. Behn says further, “Government needs to pay people enough to attract real talent. Then, to motivate them, it needs to use not money but the significance of the mission they are attempting to achieve.”

The DHS regulations also call for market-based pay. DHS has had a hard time attracting law enforcement officers because often the local police and sheriff’s departments offer higher pay, so we understand the attractiveness of the idea to agency management. Our support for the Federal Employees Pay Comparability Act (FEPCA) is well known, and it is above all a market-based system. Indeed, it is odd that the crusaders for pay for performance routinely introduce “market-based” factors as if they were a “new” or “modern” idea that the current system lacks. But what is the principle of comparability if not market-based pay? And why do pay for performance zealots disparage comparability and then suggest market-based pay as its alternative?

The answer is that market comparability is expensive, and difficult to administer with accuracy because so many federal jobs are unique to the government. One crucial and costly administrative factor is the collection of data that matches federal jobs with jobs in the private sector. Notwithstanding the Administration’s insistence that half of all federal jobs are “commercial” in nature and ought to be contracted out since firms already doing similar work are listed in the Yellow Pages, the truth is that job matches for federal jobs are extremely scarce. Most federal jobs are not “commercial,” they are inherently governmental and simply do not exist outside the government. For example, the FAA has a market-based system that excludes its core employees, the air traffic controllers, because, of course, there is no comparable job outside the federal government.

The market also is volatile. The Design Team saw systems in which an employee, whose job is no longer valued as highly in the market as it once was, is left to languish, with little or no pay increases until the market changes, the employee drops below it and needs an increase to catch up, or decides to seek employment elsewhere.

Market studies also can be manipulated to get the results an employer wants. DHS chose not to use the United States Bureau of Labor Statistics (BLS) to do the studies, we believe, because it feared it would not get the answers it wanted. Instead, DHS is using a private contractor to do these studies. The studies are made even more complex because so many diverse jobs are put in the same clusters and bands. Deciding which benchmark jobs to study can skew a band higher or lower in the market.

While AFGE strongly opposes so-called pay for performance, the fact is that it can actually be made worse by allowing some employees to move ahead in terms of pay because of high appraisals, while other employees, with equally high appraisals, are held back because they or their entire occupation are considered to be “over market.” This is a worst of all worlds outcome, and one the DHS system seems designed to create.

## CONTINUING COLLABORATION

Since the final regulations were published, AFGE has participated in periodic continuing collaboration meetings. These meetings are primarily briefings during which DHS Human Resource staff and contractors tell us where they are in developing the new performance management, classification and pay systems. We were given the opportunity to involve our members in part of the validation process for core competencies in the performance management system last year, and appreciate that involvement. There should, however, be more genuine participation.

Last October, we were invited to attend workshops during which the market matching of benchmark jobs to the private sector were to be validated. These benchmark jobs would be used for the labor market studies that would help inform the determinations of the rate ranges of pay bands, future adjustments of those ranges, and local supplements.

We were eager to be involved and to communicate with our members who hold the jobs in question, because this is such an important key factor in their future compensation and we have a lot at stake in ensuring that it be done right. We were told that we would be advised of when the workshops would be held. After that meeting in October, there was no continuing collaboration meeting until January of this year. At that meeting, we were shocked to find that the workshops had taken place without us, and that the validation process was going forward without our involvement or the involvement of the employees who actually do the benchmarked jobs.

We were told that the decision to involve us directly in the validation process had been reversed. I wrote to the Chief Human Capital Officer objecting to this decision and said:

Not only is this necessary to carry out Congress' mandate that the new DHS personnel systems be designed and implemented in collaboration with us, but the credibility of the validation process itself is gravely compromised by the lack of involvement of frontline workers. DHS employees already are wary and skeptical about the big changes coming in their pay system. Excluding them is the wrong way to get their buy-in and the wrong way to ensure a valid and credible product.

In response, the Chief Human Capital Officer wrote, "When the time is appropriate, we will share information with AFGE..."

Our disappointment and anger with the process of developing MAX<sup>HR</sup> goes back over three years now. We participated energetically on the Design Team, the Field Review Team, Focus Groups, Town Hall Meetings, and the Senior Review Committee, only to find proposed regulations published in the Federal Register that ignored almost all of the research, our ideas, and the views expressed by management and non-management employees alike.

We participated vigorously in the Meet and Confer process required by the law, only to find our proposals almost entirely ignored in the final regulations. DHS employees, their unions, other employee organizations, and the public sent over 3500 comments in response to the proposed

regulations – it has been acknowledged by DHS that the vast majority of them were negative – only to find their views almost entirely ignored in the final regulations. This has been collaboration in name only.

### **Homeland Security Compensation Committee**

As we have stated, our experience with the continuing collaboration since publication of the final regulations has been that it is cordial and informative, but not the substantive involvement we believe Congress meant for this process. In addition to our disappointment at not being involved in the early stages of market matching, we are deeply concerned about the failure to establish the joint committee that was supposed to be overseeing the entire process of designing these systems. The final regulations call for a Homeland Security Compensation Committee, which includes four Union Officials as members that will:

...provide options and/or recommendations for consideration by the Secretary or designee on strategic compensation matters such as Departmental compensation policies and principles, the annual allocations of funds between market and performance pay adjustments, and the annual adjustment of rate ranges and locality and special rate supplements.

This Compensation Committee has not yet been established – we have not even been made aware of any draft Management Directive establishing its rules or membership. AFGE understands that some of the responsibilities of the Committee will come into play later, such as the annual decisions regarding pay adjustments and allocations. But we do not understand how or why the Department has been able to spend time, resources and money working on compensation matters before a Homeland Security Compensation Committee, including the four Union Officials, has been established and has recommended to the Secretary the compensation policies and principles that will be the foundation of the system.

The MSPB submitted a report to the President and Congress earlier this year entitled *Designing an Effective Pay for Performance Compensation System*. The MSPB report discusses the importance of an agency evaluating its readiness for pay for performance, including key decision points the agency should consider. These essentially equate to the policies and principles of the system, such as goals – is it to improve organizational and individual performance? Is it to better recruit and retain employees? Is it to have a fairer compensation system? Who should be covered by the system and will the same system work in all components of the organization? Where in the market does the organization want to pay – in the middle or be a market leader? These are just some of the policies and principles the Compensation Committee should have considered and made recommendations to the Secretary prior to so much work going into designing the system.

We fear that as we have seen so many times before with the Department's approach to involving its employees' representatives, the Homeland Security Compensation Committee will just be a body that rubber stamps the work of the contractors and Human Resources staff, with the union members allowed to submit a minority report that will be ignored.



## DHS EMPLOYEE MORALE AT DEVASTATING LOW

The MSPB report outlines important factors necessary for an organization to succeed in pay for performance. In assessing their readiness for pay for performance, the Report suggests that agencies look at whether:

- Open, two-way communication is valued and pursued.
- Trust exists between employees and supervisors/managers.
- Human resources management (HRM) systems such as selection, training, and performance evaluation have clear and consistent objectives and support pay for performance.
- Employee efforts support organizational goals.
- Work assignment, evaluation of performance, and distribution of awards are fair.
- Assessment of employees is fair and accurate.
- Employees receive timely, accurate, and meaningful feedback.

During the Design Team process, the focus groups and Town Hall meetings, the comments to the proposed regulations, and in our own more recent meetings with our bargaining units, employees of DHS have answered a resounding “NO”! And, in OPM’s Human Capital Survey of Federal Agencies in 2004, DHS came in last of the 30 agencies surveyed on these very factors. The Center for American Progress, which analyzed the OPM data, said:

Less than 40% of the department’s employees agreed or strongly agreed with the statement, *“My organization’s leaders maintain high standards of honesty and integrity.”* Less than one-third of the employees agreed that *“Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated,”* while only a little more than a quarter concurred with the statement, *“In my Organization, leaders generate a high level of motivation and commitment in the workplace.”*

Only four in 10 DHS employees felt that they could *“disclose a suspected violation of any law, rule or regulation without fear of reprisal”* while less than one-third felt that *“Complaints, disputes or grievances are resolved fairly...”* Less than half of DHS employees felt that *“Discussions with my supervisor/team leader about my performance are worthwhile.”*

It is hard to imagine an organization less well suited to moving to a pay for performance system. Clearly, gutting collective bargaining and diminishing employee rights will only push DHS even further in the wrong direction. The Center for American Progress goes on to say:

Managers at DHS appear to have failed completely in developing rapport with the agency workforce. The level of employee discontent evidenced by this survey creates the type of situation in which those federal workers with the highest skill levels, who are most attractive to other employers, are likely to leave the department and perhaps the federal workforce.

Concerning the revised personnel rules, the Center said:

Whatever one might think about the merits of these proposals in theory, it is painfully obvious that the enhanced administrative authorities that were granted to departmental administrators were handled poorly, not only to the detriment of DHS employees, but the public, and in particular the taxpayer.

As mentioned above, our own survey of CBP employees showed the same results as the OPM survey. Is it any wonder that morale is so low among DHS employees?

## **RECRUITMENT AND RETENTION**

When all is said and done, what matters most to the American people is that the Department of Homeland Security carry out its critical mission and prevent further terrorist attacks on U.S. soil. The details of how that mission gets accomplished must be worked out here: in the halls of Congress and at DHS. And we need to get it right.

In our view, most of what has been discussed in connection with the MAX<sup>HR</sup> program will have the effect of forcing out the longest serving, most experienced and most capable individuals now serving in the U.S. government. They will be replaced by young and inexperienced people, whose most important skill will be the ease with which they fit into the “command and control” environment DHS management seeks to emulate. Such a structure may breed good soldiers, but on U.S. borders, the war on terrorism is fought best by experienced, independent thinking law enforcement officers.

AFGE proposes a different approach. Instead of forcing a system on employees without their agreement, why not try creating a system that maximizes the talent and experience of front line workers? Instead of treating people like inanimate gears in a machine, why not utilize the common sense, on the ground, day-to-day experience of these men and women to create a truly effective model of government efficiency and effectiveness? Unless there are fundamental changes in the Administration’s approach to managing its employees, both hiring new employees and keeping valuable, experienced workers on the front lines will become impossible. These people are free to leave an unsatisfactory situation. It is our job to keep their jobs competitive.

In that context, it should be noted that as recently as March 27, in an article entitled “Police Finding it Hard to Fill Jobs,” the Washington Post reported that Police departments around the country are contending with a shortage of officers and trying to lure new applicants with signing bonuses, eased standards, house down payments and extra vacation time. These benefits and bonuses are all in addition to the law enforcement retirement benefits most state and local police departments offer.

In my own travels around the country meeting with DHS employees, I have been struck by the extreme difficulty many are encountering in trying to live and raise their families in high cost areas on pay that is not competitive. Dedicated employees, who work for DHS, have told me that in order to find affordable housing for their families, they are forced to live so far away from

their duty stations that they live out of their cars for days in order to be at work on time. This is a critical problem that needs immediate solutions, such as housing allowances to attract and retain the workers we need.

As a first step, AFGE urges this committee to take a hard look at legislation introduced last year by Rep. Sheila Jackson Lee (D-TX). This bill, H.R. 4044, the Rapid Response and Border Protection Act of 2005, would address long-standing problems that have hampered the effectiveness of front line Border Patrol Agents, CBP Officers and other federal law enforcement employees. It also would allow for a new beginning in labor relations with the Department of Homeland Security by repealing those sections of the Homeland Security Act that called for the promulgation of the MAX<sup>HR</sup> regulations. This would provide all parties with a fresh start in developing a system that can truly be called a visionary plan for the 21<sup>st</sup> century.

### **Law Enforcement Officer Status**

The bill includes the text of legislation long advocated by Rep. Bob Filner (D-CA) in H.R. 1002 to provide full law enforcement retirement benefits (6c Coverage) to all federal officers required to carry a gun and wear a badge. In the case of DHS Customs and Border Protection Officers, I can assure you their role goes far beyond that.

According to statistics released by CBP in 2004, in 2003 CBP Officers intercepted 483 suspected terrorist/security violators, arrested 17,618 criminal aliens, and seized 72,398 fraudulent documents. In all, CBP Officers arrested and detained over one million people seeking to enter the U.S. illegally in that year. Every one of those detentions and arrests is fraught with the risk of physical danger, which is why CBPOs are armed and fully trained to handle dangerous situations. It is also why the names of forty-three courageous U.S. INS and Customs Inspectors are on the wall memorializing federal law enforcement officers killed in the line of duty. It is unconscionable for CBPOs, who are armed, enforce federal law, and have arrest powers, to be denied law enforcement officer status for retirement purposes.

### **Equipment, Training, and Working Effectively**

H.R. 4044 also includes a long list of items that will guarantee that U.S. Border Patrol Agents and CBP Officers are the best equipped, best trained, most experienced and most motivated work force in the U.S. Government. These include:

- Improved body armor, weapons, night vision goggles and other equipment necessary to carry out the work of federal law enforcement officers responsible for defending the borders;
- Improved training and operational facilities designed to effectively integrate the large numbers of new hires expected in both the Border Patrol and among CBP Officers;
- Repeal of the Administration's failed "One Face at the Border" initiative, which is based on the false assumption that the complex laws and regulations for customs, immigration, and agriculture products can be easily administered by the same people; and

- Elimination of the fixed deployment strategy in which Border Patrol Agents are deployed to fixed positions and required to remain in place regardless of what they observe in their area of operation.

### **Other Than Permanent (OTP)**

OTPs are employees of long-standing, who work part-time schedules and fill in when needed because of high workloads or to allow full-time employees to take vacations or deal with family needs. Some of them came out of Customs while others were former Immigration and Naturalization Service employees. There are about 500 of these employees across the country. They are paid at a lower grade than the full-time employees, and some have other jobs. They are experienced and dedicated and provide an invaluable service by coming on board when needed to relieve full-time employees or augment their number. CBP is attempting to do away with these employees, forcing them to be retrained for jobs they are already doing and putting them in permanent jobs that many do not want. By doing this, CBP is hurting these valuable employees, making it harder for full-time employees to take vacations when it works for them and their families, and removing a workforce that actually helps CBP be more flexible. This is wrong. OTPs should be kept on and allowed to continue to do the work they have been doing.

Taken together, these provisions will move us a long way toward what we need to achieve at the Department of Homeland Security – a Federal agency that carries out its most critical mission and prevents future terrorist attacks on U.S. soil.

### **“One Face at the Border”**

CBP has attempted to establish what it calls “One Face at the Border.” The idea was to take the experience and skills of former INS, Customs and Agriculture employees and combine them into one position. In reality, this has been difficult to do – each discipline is very complex – combining them threatens to weaken expertise in all three. In fact, we are starting to see CPB Officer positions offered with specialties in, for example, Immigration law – a tacit recognition of the need for the experience and education of these legacy organizations.

Although on paper DHS advocates for “one face” at the border, many of its actual personnel practices continue to emphasize the differentiation between “legacy INS” and “legacy Customs” officers. Instead of raising CBP employees to the best of the various benefits they enjoyed before, DHS has created a confusing morass of procedures and policies that take away income and rights without replacing them with anything of comparable value. CBP Officers may be called “One Face at the Border,” but they are acutely aware that they are not treated equally, nor do they share the same benefits. For example:

- **Foreign Language Award Program (FLAP)** – AFGE recently filed two grievances on behalf of employees who are not receiving additional pay for having foreign language skills. The Foreign Language Award Program guarantees foreign language proficiency pay for those employees who use language skills on the job in languages other than

English. While many officers from legacy Customs have been awarded foreign language pay, the majority of legacy INS officers have not.

- **Administratively Uncontrollable Overtime (AUO)** – When DHS consolidated different groups of employees it re-classified former INS Senior Inspectors as CBP Officers and eliminated their right to a lump sum payment for working overtime. Although the Senior Inspectors’ duties have remained the same, their pay has been drastically reduced.

These are just a couple of examples of the differences CBP employees continue to see in their work places, while they are told they are “One Face on the Border.”

## **TRANSPORTATION SECURITY ADMINISTRATION (TSA)**

After September 11, 2001, the Bush Administration reluctantly agreed that the terrorist attacks necessitated federalizing airport security functions, but they also insisted that the legislation not allow security screeners the protections normally provided to federal employees. Consistent with this position, then Under Secretary of TSA Admiral James Loy issued a decision on January 8, 2003 which denied the right to collective bargaining to all federal airport security screeners. AFGE subsequently filed suit in federal district court to protest this action, but the courts have to date upheld the Bush Administration. TSA was given the ability to prevent independent oversight of decisions affecting employees, which has left workers with no alternative but to seek remedies from the very management that created the problem in the first place. The power of TSA management is almost totally unchecked.

A statutory footnote in the legislation creating TSA and federalizing the jobs of airport screeners, the Aviation and Transportation Security Act (ATSA), allows the TSA Administrator to create unique personnel policies for the largest portion of the TSA workforce—42,000 airport screeners. Striking examples of the pervasiveness and extent of airport screeners’ lack of labor rights include:

- TSA’s refusal to honor the First Amendment right of freedom of association, resulting in screeners being fired for simply talking about the union and posting and distributing AFGE union literature during break times.
- TSA has refused to hold itself accountable to the Rehabilitation Act and is therefore not required to make reasonable accommodations for workers with disabilities. This results in discrimination against workers on the basis of their disability.
- Although Congress clearly indicated that the veteran’s preference honored by the rest of the federal government also applied to screeners, the TSA has failed to apply veteran’s preference in promotion and reduction-in-force decisions. Moreover, even though other federal agencies apply the veteran’s preference to both those who retired from the military and those who leave active duty, TSA has redefined what it means to be a veteran—only retired military personnel are awarded whatever veteran’s preference TSA management chooses to give.
- Disciplining screeners for using accrued sick leave benefits for documented illnesses.

- Paying screeners thousands of dollars less than promised at the time of hire, because screeners do not have an employment “contract” with the government, and therefore, no contract protections.
- Denial of enforceable whistleblower protections.

TSA has argued in federal court, before the Federal Labor Relations Authority, and before the MSPB that the language of the footnote does not require the agency to follow the FAA personnel policy or later, after becoming part of DHS, the DHS personnel system with respect to airport security screeners, the overwhelming percentage of the agency’s workforce. It is impossible that any legitimate security consideration precludes airport screeners from enforcing their labor rights when current law allows privately-employed airport screeners performing the same duties the protection of the very labor laws denied federal airport screeners, including the right to bargain collectively. Even though federal airport screeners are denied the ability to bring workplace disputes before the MSPB for a fair hearing by a neutral third party, their management supervisors—from screening managers to Deputy Federal Security Directors to Federal Security Directors themselves—can readily avail themselves of the due process afforded by the MSPB.

Screeners should be guaranteed the same workplace securities that other DHS employees and other federal employees enjoy. Denial of the meaningful ability to enforce the most basic of worker rights and persistent inadequate staffing have taken their toll on the screener workforce. Screeners are subject to extensive mandatory overtime, penalties for using accrued leave and constant scheduling changes because of the failure of the TSA to hire adequate numbers of screeners. It is not surprising that TSA has among the highest injury, illness and lost time rates in the federal government. In fiscal year 2004, TSA employees’ injury and illness rates were close to 30%, far higher than the 5% average injury and illness rate for all federal employees. As a result of continuing mistreatment of the screener workforce, the ability of screeners to do their jobs is greatly hampered, and public safety jeopardized. Without the comprehensive protections offered by labor laws—including the right to bargain collectively, an established personnel system, and the right to an independent review of adverse personnel actions--airport screeners are subject to the often arbitrary and constantly changing personnel policies dictated by the Federal Security Directors working at 425 airports across the country. Congress should repeal immediately the ATSA footnote and restore to federalized screeners the labor rights afforded to all other federal workers – at the very least, they should have the same rights as all other DHS employees.

## **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

Currently, FEMA is bearing the brunt of harsh criticism for its response to Hurricane Katrina. There are even calls for it to be dismantled. In 1992, FEMA came under attack for its handling of Hurricane Andrew. Instead of being dismantled then, a professional emergency manager, James Witt, was appointed to rebuild the agency. Witt turned the agency around. In fact, the name “FEMA,” which had come to symbolize incompetence and bureaucracy at its worst, soon came to denote excellence in the public’s mind. FEMA was used as an example of a high-performance agency and Witt was invited to speak about the remarkable transformation of his agency at conferences.

What are the factors that Witt used to build an effective, responsive agency that worked so well? Here are a few:

- Disaster prevention, preparedness, response, and recovery were grouped together in one agency so that staff of those functions could quickly work together in a crisis.
- The top positions at FEMA were held by experienced emergency managers.
- The Federal Response Plan was clearly written in plain English and allowed FEMA to draw on every agency of the Federal Government in an emergency.
- The FEMA Director had direct access to the President.
- An emphasis was placed on training and keeping experienced staff who would be ready to respond to an emergency on a moment’s notice.

There is no doubt that more recently there has been a crisis of leadership at FEMA. It is this crisis that led to the woefully inadequate response to Hurricanes Katrina, Rita and Wilma last summer. It is also true that many FEMA employees are demoralized and some have left. But the agency still is staffed by some of the most dedicated, motivated, and talented professionals in government, who want to be able to do their jobs and protect American lives and property.

We know what works. We saw what was able to be done in the 1990’s. Rather than do away with FEMA, we should restore it to its past excellence by getting it out of Homeland Security, making it an independent agency, and giving it the leadership and resources it needs to once again be a model government agency.

## CONCLUSION

AFGE calls on Congress to restore to DHS employees the important rights and protections eliminated by the new personnel regulations promulgated by the Department. In particular, we urge you to restore due process and collective bargaining rights to DHS employees. In addition, Congress must ensure that overall pay levels for DHS employees are not reduced compared to those under the General Schedule in other federal agencies.

It would be a grave mistake to view the new DHS personnel system regulations simply as an arcane set of rules governing such mundane issues as pay rates, civil service protections and collective bargaining rights for employees. To do so greatly diminishes the importance of these changes on the readiness of the nation to prevent another terrorist attack or respond to natural disasters like Hurricane Katrina. Unlike most federal agencies, the core mission of DHS is the safety of the American public, and the fundamental changes to the personnel system for DHS workers must be viewed through that prism. The funds going to develop and implement MAX<sup>HR</sup> would be far better spent ensuring adequate staffing, training, and equipment to protect public safety.

Without a doubt, dedicated and experienced personnel are America's most invaluable resource in the war on terror. No technology can replace their perseverance, expertise, and ingenuity. Keeping these employees motivated to remain in the service of our country is not simply a matter of fairness to them, but is also absolutely essential to the protection of our nation against the threat of terrorism and the consequences of natural disasters. The new DHS personnel system completely fails to achieve that goal and it must be repealed or substantially modified by Congress in the interest of homeland security.